

FILE COPY

No. 381

IN THE

**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 1947

ESTATE of ALBERT PATTERSON HUMPHREY, Deceased, JOE A. HUMPHREY, Independent Executor,

*Petitioner,*

VS.

COMMISSIONER OF INTERNAL REVENUE

*Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

R. B. CANNON

909-913 Sinclair Building

Fort Worth 2, Texas

*Attorney for Petitioner*

September, 1947

OF COUNSEL:

WEEKS, BIRD, CANNON & APPLEMAN

909-913 Sinclair Building

Fort Worth 2, Texas

## I N D E X

	Pages
Petition for Certiorari .....	1
Question Presented .....	1
Statutes and Regulations Involved .....	2-5
Statement ....	5-6
Specification of Errors To Be Urged .....	6
Reasons for Granting the Writ .....	6-7
Brief in Support of Petition for Certiorari .....	9
Opinion Below .....	9
Jurisdiction ....	9
Statutes and Regulations Involved .....	10
Question Presented ....	10
Statement ....	10
Specification of Errors To Be Urged .....	10-11
Argument ....	11-14
Conclusion ....	14

# AUTHORITIES CITED

	Pages
<b>Cases:</b>	
Heiner v. Donnan, 285 U. S. 312, 330 .....	12
Igleheart v. Commissioner, 77 F. 2d 704, 711 (CCA 5th) .....	12
Liebmann v. Hassett, 148 F. 2d 247 (CCA 1st) .....	12
Schoenheit v. Lucas, 44 F. 2d 476 .....	12
Snyder v. Helvering, 69 F. 2d 377 .....	12
<b>Statutes:</b>	
Internal Revenue Code:	
Sec. 811 .....	2
Sec. 811(c) .....	2,3,6,12,13
Judicial Code:	
Sec. 240(a), as amended .....	9
<b>Treasury Regulations:</b>	
Regulations 105 .....	3
Sec. 81.15 .....	3,12
Sec. 81.16 .....	3,4

No.....

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

---

ESTATE of ALBERT PATTERSON HUMPHREY, Deceased, JOE A. HUMPHREY, Independent Executor,

*Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

---

## **Petition for Writ of Certiorari to The United States Circuit Court of Appeals for the Fifth Circuit**

---

Joe A. Humphrey, Independent Executor of the Estate of Albert Patterson Humphrey, Deceased, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause on July 2, 1947, affirming a decision of the Tax Court of the United States.

### **Question Presented**

The question presented is whether, where an irrevocable gift of money was made by a father to his adult son for the specific purpose of enabling the son to invest such money in a hazardous business venture, the funds were so employed, and substantial losses incurred during the father's lifetime, there may be in-

cluded in the gross estate of the decedent the total sum of the money so transferred, or must the amount included in decedent's gross estate because of such transfer, which has been determined to have been made in contemplation of death, be limited to the fair market value at the date of decedent's death of the property on hand at the date of death in which such transferred funds were invested?

### Statutes and Regulations Involved

#### INTERNAL REVENUE CODE:

##### Sec. 811. *Gross Estate*

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States.

\* \* \* \* \*

(c) *Transfers in Contemplation of, or Taking Effect at Death.*—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who

shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;

\* \* \* \* \*

#### REGULATIONS 105:

*Sec. 81.15. Transfers during life.* The following classes of transfers made by the decedent prior to his death \* \* \* are subject to the tax: (1) transfers in contemplation of death (see Sec. 81.16);

\* \* \* \* \*

The value of transferred property includible in the gross estate is the value thereof at the date of decedent's death \* \* \*

*Sec. 81.16. Transfers in contemplation of death.* Transfers in contemplation of death made by the decedent after September 8, 1916, other than bona fide sales for an adequate and full consideration in money or money's worth, must be included in the gross estate. A transfer in contemplation of death is subject to the tax although the decedent parted absolutely and immediately with his title to, and possession and enjoyment of, the property.

The phrase "contemplation of death," as used in the statute, does not mean, on the one hand, that general expectation of death such as all persons entertain, nor, on the other, is its meaning restricted to an apprehension that death is imminent or near. A transfer in contemplation of death is a disposition of property prompted by the thought of death (though it need not be solely so prompted). A transfer is prompted by the thought of death if it is made with the purpose of avoiding the tax, or as a substitute for a testamentary disposition of the property, or for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized to determine whether or not such thought prompted the disposition.

Any transfer without an adequate and full consideration in money or money's worth, made by the decedent within two years of his death, of a material part of his property in the nature of a final disposition or distribution thereof, is, unless shown to the contrary, deemed to have been made in contemplation of death.

If the executor contends that the value of a transfer of \$5,000 or more made by the decedent subsequent to September 8, 1916, should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive

in making the transfer and his mental and physical condition at that time, and one copy of the death certificate.

### Statement

Albert Patterson Humphrey died testate February 23, 1942. The reported value of his estate for federal estate tax purposes was \$185,475.00. On January 18, 1941, within two years prior to his death, the decedent and his wife each made cash gifts to one of their two sons of \$40,000.00. The two sons were intending to, and shortly afterward did, engage in a speculative venture for which they needed more capital. The gifts referred to were made expressly to furnish such additional needed capital.

The two sons took the \$80,000.00 given by their parents, combined it with \$80,000.00 of their own, and paid the entire \$160,000.00 into a partnership known as Humphrey Bros. The said \$160,000.00 constituted the entire initial capital of the partnership Humphrey Bros. By their operations through the partnership Humphrey Bros., the two sons prior to their father's death had lost approximately one-half of the \$160,000.00 initial capital of Humphrey Bros.

Under the foregoing state of facts, the Commissioner of Internal Revenue included the \$40,000.00 transferred by decedent to one of his sons in the gross estate



of decedent and taxed it. The Tax Court sustained this action, finding that the \$40,000.00 was, as a matter of fact, transferred in contemplation of death because the evidence not only did not rebut the statutory presumption stated in *Internal Revenue Code, Section 811(c)*, but the circumstances showed such contemplation. The Circuit Court of Appeals for the Fifth Circuit affirmed.

### **Specification of Errors To Be Urged**

The Circuit Court of Appeals erred in requiring that there be included in decedent's gross estate the sum of \$40,000.00, being the amount of the cash gift by the father to his son, and in failing and refusing to limit the amount so included to one-fourth of the fair market value of the net assets of Humphrey Bros., a partnership, which did not exceed the sum of approximately \$20,000.00.

### **Reasons for Granting Writ**

The writ should be granted because the holding of the court below fails to properly interpret and apply the applicable provisions of the Internal Revenue Code and Treasury Regulations promulgated thereunder, and because the court below decided an important question of federal law which has not been, but which should

be, decided by this court. It is believed that the writ should issue to the end that there may be an authoritative decision of this Court upon the question involved.

WHEREFORE, it is respectfully submitted that the petition should be granted.

R. B. CANNON  
909-913 Sinclair Building  
Fort Worth 2, Texas  
*Attorney for Petitioner.*

September, 1947

OF COUNSEL:

WEEKS, BIRD, CANNON & APPLEMAN  
909-913 Sinclair Building  
Fort Worth 2, Texas



No. ....

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1947

ESTATE of ALBERT PATTERSON HUMPH-  
REY, Deceased, JOE A. HUMPHREY, Inde-  
pendent Executor,

*Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*

Brief in Support of Petition for Writ of Certiorari to  
the Circuit Court of Appeals for the Fifth Circuit

**Opinion Below**

The opinion of the Circuit Court of Appeals is re-  
ported at 162 F. 2d 1. The decision of the Tax Court  
of the United States was entered pursuant to memoran-  
dum findings of fact and opinion entered January 18,  
1946, but not reported.

**Jurisdiction**

The judgment of the Circuit Court of Appeals was  
entered July 2, 1947. The jurisdiction of this Court  
is invoked under *Section 240 (a)* of the *Judicial Code*,  
as amended by *43 Stat. 938* (U.S.C., Title 28, Sec. 347).

### **Statutes and Regulations Involved**

The Internal Revenue Statutes and Treasury Regulations involved are fully set out at pages 2 to 5 of the petition for certiorari, to which reference is hereby made.

### **Question Presented**

The question presented is whether, where an irrevocable gift of money was made by a father to his son for the specific purpose of enabling the son to invest such money in a hazardous business venture, the funds were so employed and substantial losses incurred during the lifetime of the father, there may be included in the gross estate of the decedent the total sum of the money so transferred, or must the amount included in decedent's gross estate because of such transfer be limited to the fair market value of the property on hand at the date of decedent's death in which such transferred funds were invested?

### **Statement**

The statement of facts contained in the petition for certiorari (pages 5 to 6, *supra*) sufficiently develops the salient facts. Reference to that statement is hereby made.

### **Specification of Errors To Be Urged**

The Circuit Court of Appeals erred in requiring that there be included in decedent's gross estate the sum of

\$40,000.00, being the amount of the cash gift by the father to his son, and in failing and refusing to limit the amount so included to one-fourth of the fair market value at the date of decedent's death of the net assets of Humphrey Bros., a partnership, which did not exceed the sum of approximately \$20,000.00.

### Argument

In this proceeding the Tax Court determined a deficiency based upon including in decedent's gross estate the sum of \$40,000.00, which action in turn was based solely upon the finding by the Tax Court that "decedent transferred by gift on January, 1941, the sum of \$40,000.00 in contemplation of death" (R. 30). It made no finding that this sum was on hand in cash at the date of decedent's death, but on the contrary the record clearly establishes that the \$40,000.00 in question, together with an additional \$120,000.00, was paid into the partnership Humphrey Bros., and constituted the capital of that partnership. The record further discloses that much of the original capital of Humphrey Bros. (including necessarily a ratable part of the \$40,000.00 here involved) had been dissipated prior to the death of Albert Patterson Humphrey and that the value of the assets of the partnership remaining at the date of his death was only a fraction of the partnership's investment therein. Under the findings of the Circuit Court of Appeals (R. 80), it is clear that a ratable part (one-fourth) of the fair market value of the assets of the partnership Humphrey Bros. remaining

on hand February 23, 1942, did not exceed approximately \$20,000.00.

Section 811 (c) of the *Internal Revenue Code* and Section 81.15 of *Treasury Regulations 105* provide that the value of transferred property includible in the gross estate of a decedent because such property was transferred in contemplation of or intended to take effect in possession or enjoyment at or after his death is the value thereof at the date of decedent's death. See also *Liebmann v. Hassett*, 148 F. 2d 247 (CAA-1st); *Heiner v. Donnan*, 285 U.S. 312, 330; and *Igleheart v. Commissioner*, 77 F. 2d 704, 711 (CCA-5th). As pointed out in *Igleheart v. Commissioner*, *supra*, such property transferred in contemplation of death for tax purposes "is in the same category as it would have been if the transfer had not been made and the transferred property had continued to be owned by the decedent up to the time of his death."

Since the rationale of the statute is that property transferred in contemplation of death is to be treated as though the transfer had not been made, and the transferred property had continued to be owned by the decedent up to the time of his death, cf., *Snyder v. Helvering*, 69 F. 2d 377, and *Schoenheit v. Lucas*, 44 F. 2d, 476, and as though the same had then been transferred by the decedent to his heirs, it follows as a necessary corollary that only the property *in the hands of the heirs* at the date of death, or the avails of property originally received by an heir as the result of a transfer

in contemplation of death, should be required to be valued and included in the decedent's gross estate.

A simple illustration will suffice to demonstrate the absurd results that might conceivably follow if the opinion of the court below be sustained. Let us assume that a father in contemplation of death transfers to an heir ranch or farming lands having a fair market value of \$5,000.00 when transferred and that the heir sells such property for \$5,000.00 in cash (its market value at the date of sale) during the transferor's lifetime. Then let us assume that during the lifetime of the transferor oil or gas is discovered by the vendee on the property with the result that at the date of decedent's death the property, now owned entirely by the vendee, no interest in which exists in the transferor or his transferee, is worth \$500,000.00 and the transferor then dies.

Under the holding of the court below, there would be included in the gross estate of the decedent the sum of \$500,000.00. Because, under the view of the court below, property transferred in contemplation of death, is to be valued and included in the gross estate of the decedent at its fair market value at the date of decedent's death, *regardless of the fact that the then owner of the property may be a total stranger to the decedent or his heirs*. We believe that no such consequence was intended by the Congress in enacting Section 811(c)



of the *Internal Revenue Code*. We respectfully assert, therefore, that the decision of the court below was erroneous.

### Conclusion

It is respectfully submitted that the decision below is erroneous; deals with an important question of federal law that has not been, but should be, authoritatively decided by this Court, and that the petition for certiorari should be granted and the decision below reversed.

R. B. CANNON  
909-913 Sinclair Building  
Fort Worth 2, Texas  
*Attorney for Petitioner.*

September, 1947

OF COUNSEL:

WEEKS, BIRD, CANNON & APPLEMAN  
909-913 Sinclair Building  
Fort Worth 2, Texas